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PROCEDURE IN CONTEMPT CASES.

VOLUMES have been written on the subject of injunctions yet very little attention is paid to the methods or means of enforcing them. A mere passing remark that injunctions are enforced by competent proceedings seems sufficient. That contempt proceedings are instituted by filing an affidavit for a rule is well known, but as to the steps thereafter to be taken, most of us are in the dark. Is proof to be taken by the complainant after serving notice on the other party, or will the affidavit alone set the wheels of justice revolving and cause proof to be taken and punishment administered by the court whose mandate has been disobeyed?

In order to answer the above question it must first be determined what is the purpose of the contempt proceeding.

“The purpose of contempt proceedings is to uphold the power of the court and also to secure to suitors therein the rights by it awarded.”¹

If the authority and power are to be upheld, the affidavit bringing the infraction to the notice of the court is sufficient. The court may be relied on to take care of its dignity. On the other hand if the purpose of the proceedings is to secure the rights of a party litigant, it is that party's duty to collect the evidence and present it to the court with a prayer for redress. Very often, however, the complainant, presumably urged by his sacred regard for the dignity of the court, seeks to have the defendant punished for disobedience of the court's order, and in his public zeal, neglects to state and prove his own injuries. The procedure in contempt cases, however, does not depend on the option of the complainant, but is governed by as well-defined law as that in any other branch of jurisprudence.

¹ *Bassette v. W. B. Conkey Co.*, 194 U. S. 324

CRIMINAL AND CIVIL CONTEMPTS.

A contempt of court may be either a civil contempt or a criminal contempt. The two kinds of contempts are often confused, owing to a failure to recognize the importance of the distinction. As a matter of fact they differ as widely as torts differ from crimes—this analogy being especially appropriate, as in reality a civil contempt is a tort and a criminal contempt is in many respects similar to a crime.

A brief exposition of the distinction between the two kinds of contempt is given in *Davis v. Davis*:²

“A criminal attachment for contempt is for disrespectful or contumacious conduct towards the court, and is punitive.

“A civil attachment for contempt, being remedial, is merely to compel obedience to an order requiring the payment of money or the doing (or not doing) of some act for the benefit of the party litigant, and where the party ordered, fails to obey, not out of disrespect to the court, but for other reasons within or without his control.”

A civil contempt is one in which the court has no interest other than to see that the rights of the complainant are protected. It is based on an injury to the rights of the plaintiff, and is therefore remedial or civil in nature, and the only punishment which can be inflicted is a compensatory fine based upon the amount of injury or damage to the plaintiff caused by the acts complained of. The affidavit upon which a rule for a civil contempt is based bears the style and number of the original suit and must contain an allegation that complainant was injured by the acts complained of and also a plea for damages.

A criminal contempt is an act in disrespect of the court or its processes, or which obstructs the administration of justice or tends to bring the court into disrespect. The proceeding is in the name of the State, and conducted by the State, and the punishment is purely punitive in character. The opinion of the Supreme Court in the case of *Gompers v. Buck Stove and Range Company*,³ constitutes what may be said to be the last word on the interesting subject of what is a criminal and what is a civil con-

² 138 Ga. 8, 74 S. E. 830.

³ 221 U. S. 418.

tempt, or rather upon the question as to what is to determine whether the proceedings are for civil or criminal contempt.

In that case the Buck Stove and Range Company had procured first, an interlocutory injunction, and then a final injunction, against Gompers, Mitchell and Morrison, enjoining them from publishing in a newspaper edited and circulated by them that the Buck Stove and Range Company, should be included in the "Unfair" and "We don't patronize" list. A rule was taken against these three defendants alleging that, notwithstanding the interlocutory and the final injunction, they had procured to be published in a newspaper edited and circulated by one or the other of the defendants the name of the Buck Stove and Range Company, in the "Unfair" or the "We don't patronize" list. It was insisted that this was a violation of both the interlocutory and the final injunction.

The defendants denied that there had been a violation of the injunction.

After a trial in the lower court, which consisted in considering the evidence in the main case itself and also additional proof, the three defendants were sentenced—Gompers to twelve months, Mitchell to nine months, and Morrison to six months in jail. From this sentence an appeal was taken to the Court of Appeals of the District of Columbia, where it was affirmed, and from there the case went to the Supreme Court of the United States.

Mr. Justice Lamar examines the whole question with most painstaking thoroughness. He points out the difference between civil and criminal contempt as consisting in a remedial process for the benefit of the complainant in the injunction suit, on the one side, and a punitive process where the proceedings for contempt are undertaken by the public authorities, on the other. He points out that in the case at bar the proceedings were taken by the Buck Stove and Range Company, were managed by the lawyers for the range company on the one side and by the lawyers for the three defendants upon the other; that stipulations in regard to the testimony were made by counsel for the range company with the counsel for the defendants; that the cause was entitled in the same way—that is, with individual defendants on the one side, and the range company upon the other. His

conclusion is, therefore, that the proceedings were remedial in their character and that, being remedial, there could result no judgment which was punitive in character.

In the course of the opinion attention is called to the difference between injunctions requiring affirmative acts and injunctions forbidding certain conduct upon the part of the party enjoined. Where an injunction requires a defendant to do a particular thing, he may, upon refusing to do this particular thing, be brought before the court and sent to jail until he shall do that which he has been ordered to do. This is obviously remedial. On the other hand, where a defendant has been enjoined from doing a particular thing, and he has done that particular thing, no punitive measure can have any effect whatever upon the rights of the plaintiff in the injunction. He may have a feeling of satisfaction because the defendant has been punished for doing what he was ordered not to do, but the same satisfaction would exist in the mind of any citizen upon any criminal's being punished for an offense which he had committed against the public.

The court said in this opinion:

"It is not the fact of punishment, but rather its character and purpose that often serve to distinguish between the two classes of cases. If it is for civil contempt, the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt, the sentence is punitive, to vindicate the authority of the court. It is true that punishment by imprisonment may be remedial, as well as punitive, and many civil contempt proceedings have resulted not only in the imposition of a fine, payable to the complainant, but also in committing the defendant to prison. But imprisonment for civil contempt is ordered where the defendant is ordered to do an affirmative act required by the provisions of an order, which either in form or substance was mandatory in character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The decree in such cases is that the defendant shall stand committed until and unless he performs the act required by the court's order. * * * On the other hand if the defendant does that which he has been commanded not to do, the disobedience is a thing accomplished.

Imprisonment cannot undo or remedy what has been done nor afford any compensation for the pecuniary injury caused by disobedience.

"In this case the alleged contempt did not consist in the defendants refusing to do any affirmative act required, but in doing that which had been prohibited. The only possible remedial relief for such disobedience would have been to impose a fine for the use of the complainant, measured in same degree by the pecuniary injury caused by the act of disobedience."

The Supreme Court therefore held that the lower court had erred in inflicting jail sentences upon the three defendants; that such sentences were in no way remedial, but were entirely punitive in their character.

The court, however, finding that the original case had been settled between the parties, held that there could be no further proceedings for contempt of a remedial nature, and therefore did not merely set aside the sentence which had been inflicted upon the defendants, but remanded the case with direction to dismiss the proceedings for contempt which had been instituted against the defendants by the Buck Stove and Range Company, leaving, however, to the court below the right, should it see fit, to cause criminal proceedings to be instituted if there had been a contempt which involved the public.

This distinction between a civil and a criminal contempt is not a new one or one confined to the opinion in the Buck Stove and Range case. In the case of *Bassette v. W. B. Conkey Co.*,⁴ the Supreme Court draws the same sharp distinction. In *Kentucky*,⁵ *Missouri*,⁶ *Georgia*⁷ and *Illinois*⁸ the distinction has been clearly emphasized.

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⁴ *Supra*.

⁵ *City of Newport v. Newport Light Co.*, 92 Ky. 445, 17 S. W. 435.

⁶ *Fiedler v. Bambrick*, 162 Mo. App. 528. 142 S. W. 1111.

⁷ *Davis v. Davis*, *supra*.

⁸ *People v. Diedrich*, 141 Ill. 665, 30 N. E. 1038.